UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,675	12/30/2003	Scott K. Brown	06975-379001 / AOL 139	2909

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EXAMINER
LEE, CHUN KUAN

ART UNIT	PAPER NUMBER
2181	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/747,675	BROWN ET AL.
	Examiner	Art Unit	
	Chun-Kuan Lee	2181	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5,7,8,18-20,30-33 and 36-62* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5,7,8,18-20,30-33 and 36-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

CONTINUED EXAMINATION UNDER 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set

forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this

application is eligible for continued examination under 37 CFR 1.114, and the fee set

forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action

has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on

03/26/2008 has been entered.

RESPONSE TO ARGUMENTS

2.   Applicant's arguments with respect to claims 1 and 3-5 have been considered but

are moot in view of the new ground(s) of rejection. Currently, claims 4, 6, 9-17, 21-29

and 34-35 are canceled and claims 1-3, 5, 7-8, 18-20, 30-33 and 36-62 are pending for

examination.

I. REJECTIONS BASED ON 35 U.S.C. 112

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

3.   Claims 2, 8 and 20 are rejected under 35 U.S.C. 112, second paragraph, as

being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

As per claim 2, in line 2, it is not fully clear if the claimed "a rule set" is the

same/different rule set previously recited; the examiner will assume the claimed

limitation of "the rule set" for the current examination.

As per claims 8 and 20, in line 4, it is not fully clear as to which "the electronic

media" the applicant is referring to; the examiner will assume the claimed limitation of

"… prior to processing the first track of electronic media …" for the current examination.

II. <u>REJECTIONS BASED ON PRIOR ART</u>

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-3, 5, 7-8, 18-20, 30-33, 36-41, 43, 45-46, 48-53, 55, 57-58, 60-62 are

rejected under 35 U.S.C. 103(a) as being unpatentable over <u>Monteiro et al.</u> (US Patent

6,119,163) in view of <u>Coker</u> (US Pub.: 2003/0074418).

5.   As per claims 1, 19 and 31, <u>Monteiro</u> teaches a method and a system enabling

access to electronic media, the method and the system comprising a processor

configured to execute:

an access code segment structured and arranged to enable means for

accessing, by a client (Fig. 1, ref. 40), a first track of electronic media from a source

(Fig. 1, ref. 10, 20, 30, 50, 60) (Fig. 1; Fig. 8B; col. 2, ll. 10-35 and col. 14, l. 34 to col.

15, l. 33);

a rule set code segment structured and arranged to enable means for accessing,

by the client, a rule set from the source, the rule set being configured to respond to an

arising condition (e.g. condition comprising deterioration of the situation associated with

packet loss and network congestion) based on whether the arising condition is met after

the first track of electronic media has been accessed from a network (Fig. 1 and col. 7,

ll. 21-30, as the client is able to request the transferring of data at a different bitrate due

to the arising condition, the client would need to have knowledge of the corresponding

rule set in order to make the request), the rule set including:

an event definition describing an event condition to be monitored during a current

media state (col. 7, ll. 21-30), wherein the event condition comprising deterioration of

the situation associated with packet loss and network congestion, and failures are

monitored while transferring of data packets;

an event transition that enables a new media state to be realized upon detection

of the event condition (col. 7, ll. 21-30), wherein the new media state is the transferring

of the data packets at a new bitrate when increase in packet loss and network

congestion is detected;

a detecting code segment structured and arranged to enable means for detecting

the event condition has occurred (col. 7, ll. 21-30);

an event transition code segment structured and arranged to enable means for

accessing the electronic media in the new media state in response to detecting the

occurrence of the event condition (col. 7, ll. 21-30);

monitoring and detecting a network failure (col. 7, ll. 21-30 and col. 16, ll. 46-59);

and

accessing electronic media locally stored at the client (col. 8, ll. 16-30).

Monteiro does not teach the method and the system comprising the client

detecting the network failure has occurred and accessing locally store data at the client

in response to detecting the occurrence of the network failure.

Coker teaches a system and a method comprising a client detecting a network

failure has occurred and accessing locally store data (e.g. operate in local mode) at the

client in response to detecting the occurrence of the network failure (Fig. 17; Fig. 20;

[0191]-[0192] and [0194]-[0197]).

It would have been obvious to one of ordinary skill in this art, at the time of

invention was made to include Agrawal's detecting of failure and accessing of local data

into Coker's client for the benefit of implementing a more robust network environment as

the client is able to adapt and reconfigure base on the network connection (Coker, Fig.

20 and [0013]) to obtain the invention as specified in claims 1, 19 and 31.

6.   As per claim 2, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of claim 1 as

discussed above, where <u>Monteiro</u> further teaches the method comprising wherein

accessing the rule set includes downloading the rule set (e.g. security token) from a

host (<u>Monteiro</u>, Fig. 1 col. 7, II. 21-30; col. 13, I. 32 to col. 14, I. 33 and col. 17, II. 13-48),

as client need to have knowledge of the rule set, it would then be necessary for the

client to download the rule set in a similar manner as the client software.

7.   As per claim 3, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of claim 2 as

discussed above, where <u>Monteiro</u> further teaches the method comprising invoking a

media player (e.g. client software including Real Audio Player) before downloading the

rule set (<u>Monteiro</u>, page 2; col. 13, I. 32 to col. 14, I. 33 and col. 17, II. 13-48).

8.   As per claim 5, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of claim 1 as

discussed above, where both further teach the method comprising wherein accessing

the electronic media locally stored at the client includes accessing a second track of

electronic media (<u>Monteiro</u>, col. 2, II. 10-35 and col. 14, I. 34 to col. 15, I. 33 and <u>Coker</u>,

Fig. 20), as after accessing the first track the network gets disconnected, and the

subsequent second track would then be access locally.

9.   As per claim 7, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of claim 1 as

discussed above, where both further teach the method comprising wherein accessing

the first track of electronic media includes referencing a location for the electronic media (Monteiro, program guide (upper right corner) of Fig. 18), wherein accessing the first track comprising playing "Smashing Pumpkins Live!" include referencing a location for the electronic media comprising "From La Cigale in Paris".

10.   As per claims 8 and 20, Monteiro and Coker teach all the limitations of claims 3 and 19 as discussed above, where Monteiro further teaches the method and the system comprising wherein accessing the rule set with the event definition includes accessing a code segment describing a media player event for a media player (e.g. client software including Real Audio Player) that is configured to access the rule set (e.g. rule set associated with security token) prior to processing the first track of electronic media (Monteiro, page 2; col. 13, l. 32 to col. 14, l. 33 and col. 17, ll. 13-48).

11.   As per claims 18 and 30, Monteiro and Coker teach all the limitations of claims 1 and 19 as discussed above, where both further teach the method and the system comprising wherein detecting that the network failure has occurred includes receiving state information from a communications interface (Monteiro, col. 16, ll. 46-59 and Coker, [194]-[197]).

12.   As per claims 32, Monteiro and Coker teach all the limitations of claim 1 as discussed above, where Monteiro further teaches the method comprising wherein the

source include a first server structure (<u>Monteiro</u>, Fig. 1, ref. 10, 20, 30, 50, 60) and

arrange to:

enable access to the first track (<u>Monteiro</u>, Fig. 1, ref. 30), wherein the audio (first

track) can be accessed through media server (<u>Monteiro</u>, Fig. 8B); and

enable access to the rule set (<u>Monteiro</u>, Fig. 2, ref. 150 and col. 4, ll. 38-49),

wherein the rule set associated with the insertion of the advertising stream is accessed

(<u>Monteiro</u>, col. 8, ll. 1-30 and col. 13, l. 32 to col. 14, l. 33).

13.   As per claims 33, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of claim 1 as

discussed above, where <u>Monteiro</u> further teaches the method comprising:

wherein the source include a first server (<u>Monteiro</u>, media server 30 of Fig. 1)

structured and arranged to enable access to the first track (<u>Monteiro</u>, Fig. 8B), wherein

the audio (first track) can be accessed through media server,

and a second server (<u>Monteiro</u>, supervisory workstation 150 of Fig. 2) structured

and arranged to enable access to the rule set (<u>Monteiro</u>, col. 4, ll. 38-49), wherein the

rule set associated with the insertion of advertising stream (stream of commercial

advertising) (<u>Monteiro</u>, col. 8, ll. 1-30) is control and manage by the supervisory

workstation.

14.   As per claims 36, 48 and 60, <u>Monteiro</u> and <u>Coker</u> teach all the limitations of

claims 1, 19 and 31 as discussed above, where both further teach the method and the

system comprising wherein the network failure is a temporary network failure (Monteiro, col. 7, ll. 21-30; col. 16, ll. 46-59 and Coker, [0196]-[0197]).

15.   As per claims 37, 49 and 61, Monteiro and Coker teach all the limitations of claims 1, 19 and 31 as discussed above, where both further teach the method and the system comprising wherein the network failure is an interruption in the ability of the client to access the network (Monteiro, col. 7, ll. 21-30; col. 16, ll. 46-59 and Coker, [0196]-[0197]).

16.   As per claims 38, 50 and 62, Monteiro and Coker teach all the limitations of claims 1, 19 and 31 as discussed above, where both further teach the method and the system comprising wherein the network failure is a network disconnection (Monteiro, col. 7, ll. 21-30; col. 16, ll. 46-59 and Coker, [0196]-[0197]).

17.   As per claims 39 and 51, Monteiro and Coker teach all the limitations of claims 1 and 19 as discussed above, where Monteiro further teaches the method and the system comprising wherein the rule set is personalized to at least one user (Monteiro, col. 6, ll. 57-61 and col. 13, l. 32 to col. 14, l. 33), personalized through registration of the user.

18.   As per claims 40 and 52, Monteiro and Coker teach all the limitations of claims 39 and 51 as discussed above, where Monteiro further teaches the method and the

system comprising wherein the rule set is personalized to the at least one user at the source (Monteiro, col. 6, ll. 57-61 and col. 13, l. 32 to col. 14, l. 33).

19.   As per claims 41 and 53, Monteiro and Coker teach all the limitations of claims 1 and 19 as discussed above, where both further teach the method and the system comprising wherein the rule set further includes a second event definition describing an underrun condition (e.g. underrun condition resulted from packet loss or network congestion) and a second event transition that enables the new media state to be realized upon detection of the underrun condition by accessing an instantiation of the first track of electronic media encoded at a different bit rate, the method further comprising: the detecting code segment is structured and arranged to detect, by (at) the client, that the underrun condition has occurred; and the event transition code segment is structured and arranged to access, by (at) the client, the first track of electronic media encoded at a different bit rate in response to detecting the occurrence of the underrun condition (Monteiro, col. 7, ll. 21-30 and Coker, [0191]-[0192]; [0194]-[0197]).

20.   As per claims 43 and 55, Monteiro and Coker teach all the limitations of claims 1 and 19 as discussed above, where both further teach the method and the system comprising wherein the rule set further includes a second event definition describing a licensing restriction and a second event transition that enables the new media state to be realized upon detection of the licensing restriction, the method further comprising: the detecting code segment is structured and arranged to detect, by (at) the client, that

the licensing restriction (e.g. licensing restriction associated with the security token) has

occurred; and the event transition code segment is structured and arranged to access,

by (at) the client, a second track of electronic media that complies with the licensing

restriction in response to detecting the occurrence of the licensing restriction (Monteiro,

col. 3, ll. 47-61; col. 13, l. 32 to col. 14, l. 33 and Coker, [0191]-[0192]; [0194]-[0197]).

21.   As per claims 45 and 57, Monteiro and Coker teach all the limitations of claims 1

and 19 as discussed above, where both further teach the method and the system

comprising wherein the rule set further includes a second event definition describing a

type of the electronic media and a second event transition that enables the new media

state to be realized upon detection of the type of the electronic media (e.g.

advertisement type), the method further comprising: the detecting code segment is

structured and arranged to detect, by (at) the client, the type of the electronic media;

and event transition code segment is structured and arranged to perform, by (at) the

client, visualization of the electronic media in response to detecting the type of the

electronic media (Monteiro, col. 7, l. 51 to col. 8, l. 30 and Coker, [0191]-[0192]; [0194]-

[0197]).

22.   As per claims 46 and 58, Monteiro and Coker teach all the limitations of claims

45 and 57 as discussed above, where Monteiro further teaches the method and the

system comprising wherein the type of the electronic media is one of audio, video, or

data electronic media (Monteiro, col. 2, ll. 10-35 and col. 7, l. 51 to col. 8, l. 30).

23.   Claims 42, 44, 47, 54, 56 and 59 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Monteiro et al. (US Patent 6,119,163) in view of Coker (US Pub.:

2003/0074418) as applied to claims 1 and 19 as discussed above, and further in view of

Marks et al. (US Pub.: 2001/0053944).

Monteiro and Coker teach all the limitations of claims 1 and 19 as discussed

above, where both further teach the method and the system comprising wherein the rule

set further includes a second event definition and a second event transition that enables

the new media state to be realized upon availability of the prioritized media selection,

the method further comprising: detecting, by the client, the second event definition that

is now available; and processing, by the client, the second event definition accordingly

(Monteiro, col. 2, ll. 10-35; col. 7, l. 21 to col. 8, l. 30; col. 13, l. 32 to col. 14, l. 33; col.

17, ll. 13-48 and Coker, [0191]-[0192]; [0194]-[0197]).

Monteiro and Coker do not teach the method and the system comprising:

detecting event definition describing an availability of a prioritized media selection

that is now available ...;

detecting event definition describing an emergency broadcast ...; and

detecting event definition describing a particular class of content or a theme ... .

Marks teaches a system and a method comprising:

detecting event definition describing an availability of a prioritized media selection

that is now available and notifying a user of the availability of the prioritized media

selection in response to detecting that the prioritized media selection is now available ([0096]);

detecting event definition describing an emergency broadcast (e.g. urgent) and accessing the emergency broadcast in response to detecting that the emergency broadcast is available ([0096]); and

detecting event definition describing a particular class of content or a theme and performing the second event transition in response to detecting the particular class of content or the theme ([0096]-[0097] and [0103]).

It would have been obvious to one of ordinary skill in this art, at the time of invention was made to include Marks' number of different event definitions into Monteiro and Coker's system and method for the benefit of expanding the settings preferences available to the user's player and increase the different types programming provided by the server (Marks, [0014]-[0018] and [0039]) to obtain the invention as specified in claims 42, 44, 47, 54, 56 and 59.

III. CLOSING COMMENTS

Conclusion

a. STATUS OF CLAIMS IN THE APPLICATION

The following is a summary of the treatment and status of all claims in the

application as recommended by **M.P.E.P. 707.07(i)**:

a(1) CLAIMS REJECTED IN THE APPLICATION

Per the instant office action, claims 1-3, 5, 7-8, 18-20, 30-33 and 36-62 have

received a first action on the merits and are subject of a first action non-final.

b. DIRECTION OF FUTURE CORRESPONDENCES

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Chun-Kuan (Mike) Lee whose telephone number is

(571) 272-0671. The examiner can normally be reached on 8AM to 5PM.

IMPORTANT NOTE

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Alford Kindred can be reached on (571) 272-4037. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C.K.L./

May 02, 2008

Chun-Kuan (Mike) Lee
Examiner
Art Unit 2181

/Alford W. Kindred/

Supervisory Patent Examiner, Art Unit 2163